

### REMARKS

As discussed immediately below, please note that the Examiner's statement of the Disposition of Claims is incorrect.

Claims 1-47 were originally presented for examination. The Examiner indicates that claims 1, 3-13, 15, 17-42, 44, 45 and 47 are pending and rejected. Claims 2, 14, 16, 35, 37, 39 and 42-47 were canceled in the Amendment After Final filed on July 28, 2003, which the Examiner indicates in Paper No. 9 to have been entered. Therefore, the currently pending claims are 1, 3-13, 15, 17-34, 36, 38, 40 and 41. For purposes of this response, the applicants assume that all of the pending claims are rejected.

Reconsideration is respectfully requested.

### The 35 U.S.C. § 103 Rejections

The Examiner states that claims 1, 3-5, 8-15, 34, 36-38 and 40 are rejected as being unpatentable over Johnson et al. in view of Brace. Due to the cancellation of certain claims in the previous Amendment After Final, as discussed above, the correct statement should be that claims 1, 3-5, 8-13, 15, 17-31, 34, 36, 38 and 40 are rejected as being unpatentable over Johnson et al. in view of Brace. The rejection is respectfully traversed.

The stated purpose of Johnson et al. is to prevent coffee, which has broken down due to prolonged exposure to a high-temperature, from being served. All of the embodiments and teachings of the reference use and describe a thermal sensor for

measurement of temperature. Johnson et al. at column 2, lines 61-65 states: "While the beverage container will herein be described as a coffee pot and its contents referred to as coffee for purposes of illustration, it will be appreciated that the present invention may be practiced on virtually any container holding virtually any beverage." Thus, the reference merely suggests that "the present invention," i.e., a temperature measuring device that uses a thermal sensor, could be used on any container holding any beverage. There is no suggestion to use a means for taking an absorption spectrum of a beverage. Thus, a person skilled in the art would not have been motivated from the reference to combine a thermal sensor with an absorption spectrum measuring device. Assuming, for purposes of argument only, that there was such motivation, the resulting combination would be far different from the device claimed by the applicants, as discussed below.

Regarding the Brace reference, the Examiner states that: "... the chemical constituents of the wine are determined using the spectrum data." However, Brace makes no mention of wine. Brace is directed only to the measurement of an absorption spectrum to determine carbonation gas levels, or other major gaseous components using near infrared wavelengths. As in the Johnson reference, there is no suggestion in Brace that its teachings be applied to a determination of wine quality. Brace purports to teach only a "method for providing nondestructive carbonation-retention monitoring and performance prediction in beverage containers." Thus, one skilled in the art would not be motivated from Brace to take an absorption measurement of wine for determination of wine quality. Assuming such motivation for purposes of argument

only, the resulting combination would be far different from the device claimed by the applicants, as discussed below.

The Examiner has failed to make a prima facie case of obviousness with the combination of references. The applicants' claims 1, 25, 34 and 40 recite a wine quality sensor, that includes a sensor element located within a sealed wine container, where the sensor element directly contacts the wine or wine vapor and further includes a means for measuring and quantifying an absorption spectrum of the wine. Even if the above references were combined, the resulting combination, at best, would be a device that measures temperature with a conventional temperature sensor, and included a separate mechanism for taking a near infrared absorption spectrum for nondestructive (i.e., non-contact) carbonation-retention monitoring and performance. There would be no suggestion to replace the temperature sensor of Johnson et al with the NIR absorption measuring device at least because such replacement would destroy the stated function and purpose of Johnson et al. and further because Brace does not disclose a device that contacts the beverage, whereas Johnson et al. teaches that the thermal sensor must be in thermal contact with the beverage. Further still, there is no carbonation in wine.

Therefore the rejection of claims 1, 25, 34 and 40 should be withdrawn. Claims 3-5, 8-13, 15 and 17-24 depend from claim 1. Claims 26-31 depend from claim 25. Claims 36 and 38 depend from claim 34. Therefore the rejection should be withdrawn.

The Examiner states that claims 6, 7, 24, 32, 33, 35, 41, 42, 44, 45 and 47 are rejected as being unpatentable over Johnson et al. and Brace as applied to claims 1-5, 8-15, 24, 31, 34 and 36-38 above, and further in view of Reber et al. Due to the cancellation of certain claims in the previous Amendment After Final, as discussed above, the correct statement of claims rejected under this section should be claims 6, 7, 24, 32, 33 and 41. The rejection is respectfully traversed.

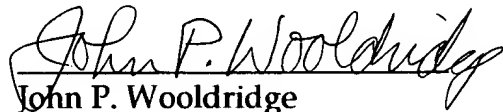
Claims 1, 25 and 40 should be allowable over Johnson et al. and Brace as discussed above. Further, Reber et al. purports to teach a food storage apparatus including a container to contain a food item, a humidity sensor to sense a humidity within the container, and a transmitter responsive to the humidity sensor to transmit a signal based upon the humidity. Also purportedly taught is a system for monitoring at least one food item within a storage place, which system comprises a receiver to receive the signal, and an indicator responsive to the receiver. All of the embodiments and teachings of the reference include a humidity sensor. There is no teaching of a heat sensor as in Johnson et al., or of a carbonation level measurement device as in Brace, or of a wine quality measurement device. There is no suggestion in any of the references to make such a combination. Such a combination would not be even similar to the invention claimed by the applicants. Thus, the Examiner has failed to set out a prima facie case of obviousness. Claims 6, 7 and 24 depend from claim 1. Claims 32 and 33 depend from claim 25. Claim 41 depends from claim 40. Therefore the rejection should be withdrawn.

Conclusions

It is submitted that this application is in condition for allowance based on claims 1, 3-13, 15, 17-34, 36, 38, 40 and 41 in view of the foregoing comments.

If any impediments remain to prompt allowance of the case, please contact the undersigned at 808-270-1011.

Respectfully submitted,

A handwritten signature in cursive script, reading "John P. Wooldridge".

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